

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
HAWAII-AMERICAN WATER COMPANY)
For Approval of Rate Increase and)
Revised Rate Schedules and Rules.)

DOCKET NO. 05-0103

ORDER NO. 23962

Filed Jan. 10, 2008
At 11 o'clock A.M.

Karen Higashi
Chief Clerk of the Commission

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DIV. OF CONSUMER ADVOCACY
DEPT. OF PUBLIC UTILITIES AND
ENERGY
STATE OF HAWAII

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

Karen Higashi

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ORDER

By this Order, the commission approves the joint request filed by HAWAII-AMERICAN WATER COMPANY ("HAWC"); the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate")¹; and the CITY AND COUNTY OF HONOLULU (the "City")² (collectively, the "Parties") on December 5, 2007, to continue deferring any further action in this proceeding pending final resolution of Docket No. 2006-0021 (the "Investigation Docket").

¹The Consumer Advocate is an ex officio party to this docket pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules § 6-61-62.

²By Order No. 22252, filed on January 31, 2006, the commission granted the City's motion to intervene, filed on November 7, 2005.

I.

Background

HAWC, a Nevada corporation,³ is a public utility authorized to provide wastewater collection, treatment, and disposal services to the residences, condominiums, and commercial establishments in the Hawaii Kai community on the island of Oahu, State of Hawaii.⁴ On August 25, 2005, HAWC filed an application for commission approval to increase its rates and revise its rate schedules and rules for service in this docket (the "Rate Case Docket").

On February 1, 2006, the commission initiated the Investigation Docket to determine whether Act 59, Session Laws of Hawaii 1974, which amended HRS § 269-1, invalidates, voids, or renders unenforceable, that certain agreement entered into in 1961 by and between the Trustees Under the Will and of the Estate of Bernice P. Bishop, deceased; Kaiser Hawaii Kai Development Co., a Nevada corporation (predecessor-in-interest to HAWC); and the City. The 1961 agreement at issue provided for, among other matters, sewerage services at no charge to the City and the State of Hawaii ("State") ("1961 Agreement").⁵

³American Water Works Company, Inc., a Delaware corporation, is HAWC's sole shareholder.

⁴In addition to its operations on Oahu, HAWC provides support services to Kaupulehu Water Company and, in early 2006, acquired the assets of Mauna Lani STP, Inc., which are both located on the island of Hawaii. See In re Mauna Lani STP, Inc. and Hawaii-American Water Company, Docket No. 05-0229, Decision and Order No. 22299, filed on February 28, 2006.

⁵The parties to the Investigation Docket are HAWC, the Consumer Advocate, the City and the State.

On July 7, 2006, the Parties filed a joint Settlement Letter in this docket stating that they had resolved their outstanding issues regarding all rate case related items, in principle, and had agreed that the remaining issues were more appropriately addressed in the commission's Investigation Docket ("Settlement Letter"). Additionally, in the Settlement Letter, the Parties proposed certain changes to the Stipulated Regulatory Schedule, approved in Order No. 22304, filed on March 3, 2006 ("Regulatory Schedule") which governs, among other things, the proceedings of the Rate Case Docket. At that time, however, the commission recognized that final resolution of this proceeding required commission determination of the issues in the Investigation Docket and, thus, deferred addressing the Parties' proposed changes.

Subsequently, the commission issued Interim Decision and Order No. 22642 on July 25, 2006, in the Rate Case Docket approving, on an interim basis, HAWC's request to increase its rates to such levels as will produce in the aggregate \$789,078 in additional revenues for the test year ended December 31, 2006, or an increase of 10.78% over revenues at present rates ("Interim Decision and Order").⁶ In the Interim Decision and Order, the commission specifically recognized that its

⁶The commission was clear that upon issuance of the final decision and order in the Rate Case Docket, any amount collected in excess of the increase determined to be just and reasonable in the final decision and order shall be refunded to HAWC's ratepayers, together with interest as provided in HRS § 269-16(d).

determination of the Investigation Docket would affect resolution of the Public Authority Classifications (i.e., Public Authority - Other and Public Authority - Dwelling) issues in the Rate Case Docket.⁷ Nevertheless, the commission in the Interim Decision and Order stated that while resolution of the Public Authority Classifications issues should be deferred, as agreed to by the Parties, it would ultimately determine the rate-related matters of the Public Authority Classifications in this proceeding.⁸

On October 16, 2007, the commission issued Decision and Order No. 23725 in the Investigation Docket ("Decision and Order No. 23725") in which the commission determined that: (1) the rates set forth in the 1961 Agreement are unenforceable and unlawful to the extent that they conflict with HAWC's tariff filed with and approved by the commission; and (2) all of HAWC's customers must pay rates set forth in the tariffs filed with and approved by the commission.

Upon issuance of Decision and Order No. 23725, commission counsel transmitted a letter dated November 7, 2007, requesting that the Parties to this proceeding formulate revisions to the Regulatory Schedule and submit a stipulation revising the schedule (or separate proposals, if no agreement) for the commission's consideration and approval by December 6, 2007.

⁷See Interim Decision and Order at 11-12.

⁸Id. at 12.

On November 15, 2007, however, the City filed a Notice of Appeal of Decision and Order No. 23725 in the Investigation Docket with the Intermediate Court of Appeals of the State of Hawaii ("Court of Appeals"), and, the State filed a Cross-Appeal of the same on November 27, 2007.

II.

Parties' Deferral Request

On December 5, 2007, the Parties filed a stipulated letter requesting that the commission defer any further action in this Rate Case Docket, including the proposed revisions to the Regulatory Schedule, pending final resolution of the Investigation Docket ("Deferral Request").⁹ The Parties' request is due to the pending appeal of the commission's decision in the Investigation Docket.

Under the circumstances, the commission finds the Parties' Deferral Request to be reasonable. This finding is consistent with the commission's prior acknowledgement that the matters of the Investigation Docket would affect the outstanding issues in the Rate Case Docket. Accordingly, the commission concludes that the Parties' Deferral Request should be approved.

⁹The Parties define "final resolution" as a final non-appealable order. See Deferral Request at 2.

III.

Order

THE COMMISSION ORDERS:

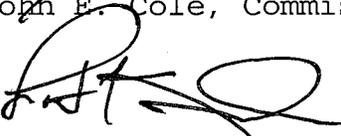
The Parties' Deferral Request, filed on December 5, 2007, is approved, until further order of the commission.

DONE at Honolulu, Hawaii JAN 10 2008.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

By 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

for 
Ji Sook Kim
Commission Counsel
05-0103.laa

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 23962 upon the following Petitioners, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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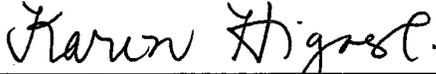
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Certificate of Service

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DATED: JAN 10 2008